

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA (DR) HAJI JUHAR
HAJI MAHIRUDDIN
Yang di-Pertua Negeri

28 DECEMBER, 2017

No. 6 of 2017

An Enactment to revise and re-enact the law relating to railways and for matters incidental thereto.

ENACTED by Legislature of the State of Sabah as follows:

PART 1
PRELIMINARY

Short title and commencement

1. (1) This Enactment may be cited as the Railways Enactment 2017.
- (2) This Enactment comes into operation on 2 January 2018.

Interpretation

2. In this Enactment, unless the context otherwise requires –
 - “Director” means the Director of Railways referred in section 3;
 - “fare” includes all sums received or receivable and all sums charged or chargeable for the conveyance of passengers;
 - “freight” includes all sums received or receivable and all sums charged or chargeable for the transport of goods;
 - “goods” includes luggage and other movable property of any description, and live or dead animal and animal product;

“Government Entity” means the Federal Government, any ministry, department, office, agency, authority, commission, committee, board, council or other body, corporate or unincorporate, of the Federal Government or the State Government, whether established under written law or otherwise;

“infectious disease” has the same meaning assigned to it under section 2 of the Prevention and Control of Infectious Diseases Act 1988 (*Act 342*);

“licensed operator” means a holder of an operator’s licence issued under section 26;

“luggage” or “passenger’s luggage” means such articles of personal use and convenience as are usually carried by passengers but does not, except in the case of commercial travellers, include articles which are carried for the purpose of business, trade or profit;

“Minister” means the Minister charged with the responsibility for railways in Sabah;

“property” means any movable or immovable property, and includes –

- (a) any right, interest, title, claim, chose-in-action, power, privilege, whether present or future and whether vested or contingent, in relation to any property, or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for any less interest;
- (c) any monetary instrument;
- (d) any other instrument or securities;
- (e) any business; and
- (f) any other tangible or intangible property;

“railway” means any kind of railway for the public carriage of passengers or goods or both, or any portion thereof, and includes –

- (a) all rails, beams, cables, sidings, or branches worked over for the purposes of, or in connection with, a railway;
- (b) all rolling-stock used for the purpose of traffic;
- (c) in so far as the context allows, a railway under construction by railway company;
- (d) any railway used or, in the case of a railway to be constructed, intended to be used, by any person for the carriage of goods within any premises occupied by such person; and
- (e) any railway used or, in the case of a railway to be constructed, intended to be used, wholly or mainly for the carriage of passengers within any amusement or recreational premises;

“railway company” includes any person or persons, whether incorporated or not, who are the owners or lessees of a railway or parties to an agreement for working of a railway;

“railway official” means any person employed by or on behalf of the Director to perform any function in connection with a railway;

“railway premises” means all premises under the control of a occupied or used by the Sabah State Railway Department or any licensed operator;

“railway reserves” means all lands duly reserved under the Sabah Land Ordinance (*Cap. 68*);

‘rate’ includes any fare, freight, charge or other payment for the transport of any passenger or goods;

“rolling-stock” includes tenders, motors, coaches, wagons, trucks, trolleys, carriage of any kind and locomotive and other kinds of engine used on a railway;

“warehouse means any building or place provided or used by the Sabah State Railway Department or a licensed operator for the purpose of storing goods; and when it is more convenient to the Sabah State Railway Department or a licensed operator that the goods to be warehoused should remain in the trucks, those trucks when placed in a siding shall, for the purposes of this Enactment, be deemed to be a warehouse.

PART II
DIRECTOR OF RAILWAYS

Director and other officers

3. (1) There shall be appointed from amongst members of the State public service, a Director of Railways and such number of officers as may be necessary for the purpose of this Enactment.

(2) The Director shall have general control of the officers appointed under subsection (1).

Functions and powers of Director

4. (1) The Director shall have the following functions and powers:

- (a) to promote the interests of users of railway facilities and services, particularly in respect of rates charged, and the standard or quality thereof;
- (b) to promote and encourage the expansion and improvement of railway systems, railway facilities and services;
- (c) to advise the Minister on all matters relating to policy and planning with respect to railway;
- (d) to issue or refuse a licence in respect of railway operations and services;
- (e) to issue or refuse a licence in respect of railway terminals;
- (f) to issue or refuse a licence in respect of railway operators;

- (g) to regulate railway operations and railway services;
- (h) to prescribe the minimum safety standard for railways operations;
- (i) to provide for the registration of and to prescribe the minimum qualifications for any railway official entrusted with the charge, control or operation of a railway as the Director considers desirable;
- (j) to perform any other functions and powers that are incidental or consequential to any of its functions and powers under this Enactment.

(2) In the exercise of his functions and powers under this Enactment, the Director shall have the powers to issue directions, guidelines or code of practices in writing to any officer or person and such officer or person shall be bound to comply with such directions, guidelines or code of practices.

Power to delegate

5. (1) The Director may in writing delegate any of his functions or powers to any officer, subject to such conditions as the Director thinks fit.

(2) A delegation under this section shall not preclude the Director himself from performing or exercising any time any of the functions or powers so delegated.

PART III
FARE AND FREIGHT, *ETC.*

Fares

6. (1) Subject to subsections (2) and (3), no person may demand, collect and retain such fares in relation to railway services in excess of such rates of fares as prescribed by the Minister under this Enactment.

(2) The Minister may, on the recommendation of the Director, exempt any person from the payment of any fares in relation to railway services, subject to such terms and conditions as he thinks fit.

(3) Nothing in this section shall prevent the Director from exempting any person, other than persons exempted by the Minister under subsection (2), from paying any fares for any period, if an application for such exemption is made by any person and such application is approved by the Director in writing, subject to such conditions as the Director may deem fit.

(4) A person who demands collects or retains or attempts to demand, collect or retain any fare in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) No person shall travel on a railway without first having paid his fare and obtaining a ticket.

(6) Every person intending to travel on a railway shall, upon payment of his fare, be furnished with a ticket specifying the class of railway coach or accommodation for, the station or place from, and the station or place to, which the fare has been paid.

(7) Every person travelling on a railway shall, when required to do so, show the proof of payment of the fare to a railway official to examine the payment of fares.

(8) For the purposes of this section, "proof of payment of the fare" shall include tickets and electronic cards issued for the purpose of payment of fares or any other satisfactory evidence of payment of fares as may be set out in regulations made under this Enactment.

(9) Where a railway official is satisfied that any person has made use of a railway without paying the appropriate fare for the distance travelled or where any person fails to produce or deliver up proof of payment of the fare in contravention of subsection (7), he may require such person to pay –

- (a) the fare for the distance travelled; and
- (b) a special charge, not exceeding such sum as may be prescribed.

(10) Such fare and special charge shall be paid on demand to the railway official, and if not so paid, payment thereof may be recovered by the Director by action at law.

(11) if any dispute arises as to the fare calculated according to distance, the dispute may be referred –

- (a) in the first instance, to the railway official to determine the dispute;
- (b) upon appeal from the decision of the railway official, to the Director to determine the dispute, whose decision shall be final, and any certificate issued by Director, shall be admissible in evidence.

Freight

7. (1) Subject to subsections (2) and (3), no person may demand, collect and retain such freight in relation to railway services in excess of such rates of freight as prescribed by the Minister under this Enactment.

(2) The Minister may, on the recommendation of the Director, exempt any person from the payment of any freight in relation to railway services, subject to such terms and conditions as he thinks fit.

(3) A person who demands, collects or retains or attempts to demand, collect or retain freight in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Timetables and lists of fares to be posted up at railway stations

8. The Director or licensed operator shall keep at every railway station a copy of the timetables for the time being in force on the railway and a list of the general fares chargeable for travelling from the railway station, where the lists are posted at every place for which tickets are ordinarily issued to passengers at the railway station, and the Director or the licensed operator shall allow all persons to inspect the timetable or list of general fares free of charge at all reasonable hours.

PART IV

CONSTRUCTION AND WORKS

Power of Director to execute all necessary works

9. (1) Subject to this Enactment, whenever it is necessary so to do, the Director may, for the purpose of constructing a railway or the accommodation or other works connected therewith –

- (a) make or construct in, upon, across, under or over any land or river, such temporary works or structures, including roads, bridges, rails, ways, conduits and drains, as the Director thinks proper; and
- (b) alter temporarily the course of any roads, streets or ways, as the Director thinks proper.

(2) In exercising the powers conferred by subsection (1), the Director shall be subject to any direction which may be given by the Minister from time to time.

(3) The Director shall, before exercising the powers conferred by subsection (1), give notice to the proprietor or occupier of the land of his intention to enter the land.

(4) The notice mentioned in subsection (3) shall state as fully and accurately as possible the nature and extent of the acts intended to be done.

Private land may be acquired for railway

10. (1) Such of the lands as are required for the purpose of constructing a railway shall be deemed to be lands required for a public purpose within the meaning of the Land Acquisition Ordinance (*Cap.69*).

(2) Proceedings under the Land Acquisition Ordinance (*Cap.69*) shall be taken separately in respect of each land.

(3) Nothing in this section shall prevent the acquisition of lands for the purpose of constructing a railway by agreement with the proprietors of occupiers of such lands.

Power of Director in case of accident

11. The Director may authorise any person, in case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the Sabah State Railway Department or licensed operator, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident and to do all such works as are necessary for that purpose.

Payment of compensation

12. (1) In exercising of the powers under sections 9 and 11, the Director or any authorised person shall cause as little damage as possible to the lands and adequate compensation shall be paid for any damage caused by the exercise of such powers.

(2) Any person claiming compensation may lodge his claim with the Director.

(3) Where there is a dispute as to the amount of compensation, the Director shall determine the amount, as far as may be, in accordance with the procedures prescribed by the law relating to the acquisition of land.

(4) Nothing in this section shall prevent the settling by agreement of the amount of compensation to be paid in respect of lands damaged or injuriously affected by the exercise of the powers conferred by this section.

Accommodation works

13 (1) The Director shall, subject to subsections (3) and (4), construct and maintain for the accommodation of the proprietors and occupiers of lands adjoining any railway -

(a) such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of or leading to or from the railway, as necessary for the purpose of making good any interruptions caused to the use of the lands by the construction of a railway;

(b) all necessary arches, tunnels, culverts, drains, watercourses or other passages over or under or by the sides of the railway of such dimensions as will, in the opinion of the Director, be sufficient at all times to convey water from or to the lands adjoining or lying near or by the railway as freely as before the construction of the railway or as nearly so as may be.

(2) Subject to this Enactment, the works specified in paragraphs (1)(a) and (b) shall be made during or immediately after the laying out or formation of the railway over the lands traversed by it, and in such manner as to cause as little damage, injury or inconvenience as possible to persons interested in the lands or affected by the works, as the case may be; and if there is damage or

injury to the lands the Director shall pay adequate compensation to the persons interested therein.

(3) The Director shall not be required –

(a) to make any accommodation works in such a manner as would prevent or obstruct the working or use of the railway; or

(b) to make any accommodation works with respect to which the proprietors and occupiers of the land have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made.

(4) Where Director has provided a suitable crossing for a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having control over such road or stream, the Director shall not be required to provide any other crossing for the road or stream.

Additional works

14. If -

(a) a proprietor or an occupier of any land adjoining a railway considers that the accommodation works made under section 13 are insufficient for the commodious use of the land; or

(b) any Government Entity desires to construct a public road or other work across, over or under a railway, the proprietor, occupier or the Government Entity may, at his or their own expense, cause to be made such further accommodation works as the proprietor, occupier or the Government Entity considers necessary and if agreed to by the Director or, in the case of a difference of opinion between the proprietor, occupier or Government Entity and the Director, such further accommodation works as authorised by the Minister.

Fences, boundary marks or screen

15. The Director may –
- (a) provide or renew, as the case may be, fences or boundary marks for its railway and any road constructed in connection therewith; or
 - (b) provide or renew, as the case may be, any works in the nature of a screen near to or adjoining the side of any road constructed before the making of the railway for the purpose of preventing danger to the public using the road.

Graded crossings

16. Where a railway track is constructed across an existing road on the level, the Director may, if it appears to him necessary for public safety and convenience, at any time, require, within such time as he thinks fit -
- (a) to carry the road either under or over the railway track by means of a bridge or arch with convenient ascents and descents and other convenient approaches instead of crossing the road on the level; or
 - (b) to execute such other works as in the circumstances of the case appear to the Director to be best adapted for removing or diminishing the danger arising from the level crossing and for meeting the convenience of the public.

Road crossings

17. (1) Wherever a railway track is constructed across an existing road on the level (such crossing not being an “occupation crossing” within the meaning of section 19), the Director shall cause good and efficient gates or barriers to be erected and maintained at the point where the railway track crosses the road, and shall employ proper persons to open and shut such gates or barriers and

such gates or barriers shall be kept closed against the road when rolling-stock is crossing the road.

(2) The Director may, at any time, declare that subsection (1) shall not apply to such crossings as are specified in the declaration.

(3) Where any such any declaration has been made under subsection (2), the Director shall erect warning boards alongside the road and whistle-signals alongside the railway track at suitable distances from such level crossing, and the driver of every engine or other motive vehicle shall sound the whistle of his engine or other motive vehicle in accordance with such signals before the engine or other motive vehicle crosses the road.

(4) The Director shall not be liable for any damage caused to any person or property by the passage of any engine, other motive vehicle or any other rolling-stock attached to it across the road at any crossing specified in a declaration under subsection (2) unless it is proved that the driver of the engine, motive vehicle or rolling-stock did not sound the whistle of his engine, motive vehicle or rolling-stock in accordance with the signals.

(5) Where a Government Entity or any other person constructs a road across an existing railway track, the Government Entity or any other person charged with the responsibility for the maintenance of such road shall be liable to pay to Director the cost of the construction of any gate or barrier erected at the point where the road crosses the railway track and an annual rent for the maintenance thereof.

Private crossings

18. (1) The Director may, on a request made by any person, construct and open private crossings at any place on a railway track, and may impose conditions regarding the use thereof.

(2) The cost of the construction of a private crossing and an annual rent for the maintenance of it shall be paid by the person for whom such crossing has been constructed.

(3) The Director may, in the event of failure by the person for whom such crossing has been constructed to comply with the conditions imposed, or if it is expedient so to do in the interests of the railway, close any private crossing.

Occupation crossings

19. (1) The Director may, at any time, by notification in the *Gazette* declare any road or path which a railway tracks crosses to be an "occupation crossing".

(2) When any such declaration has been made, the Director shall provide, at such occupation crossing, gates or barriers across the road or path, which shall not be capable of closing across the railway track, and which shall be kept locked when not in use. The keys of such gates or barriers shall be kept by a railway official.

(3) The Director may, from time to time, define the hours suitable for the opening of the gates and barriers of any occupation crossing, and the gates or barriers shall only be opened by the railway official with whom the keys of such gates or barriers are kept at the times so defined by the Director.

Removal of trees dangerous to or obstructing the working of a railway

20. (1) Where in the opinion of the Director there is at any time danger or suspected danger that any tree standing on land other than railway land, may -

(a) fall on to a railway, or on the route of any telephone, signal, electric light or electric power wire; or

(b) obstruct, interfere with, or cause damage to the construction or proper working of a railway or of any such telephone, signal. electric

light or electric power wire or to any post, other structure or fitting supporting the same or appurtenant thereto,

The Director or any authorised person may cause the tree to be cut down or dealt with in such other manner as may, in the opinion of the Director, avert the danger or remove the obstruction, as the case may be.

(2) Where a tree obstructs or interferes with the view of any fixed signal, the Director or any authorised person may cause the tree to be cut down or dealt with in such other manner as will remove the obstruction or interference, as the case may be.

Notice of felling or clearing of trees or jungle adjacent to railway

21. (1) The proprietor or occupier of any land shall, before felling or clearing any tree or jungle adjacent to a railway, give seven days' prior written notice to the Director of his intention to do so and shall take all reasonable precautions for the protection of the railway or any telephone erected thereon.

(2) Where any damage is caused to the railway or any telephone erected thereon, the Director may, recover compensation from the proprietor or occupier by action at law.

PART V RAILWAY SCHEME, ETC.

Railway scheme

22. (1) No railway shall be constructed without the approval of the Minister, acting on the recommendation of the Director.

(2) Any person intending to construct a railway shall submit an application to and deposit with the Director a railway scheme, which shall contain the following information:

- (a) the type and system of the proposed railway, including the proposed type or types and quantity of rolling-stock to be used on the railway, the proposed fare collection system and whether the railway will be used for the carriage of passengers or goods or both;
- (b) the proposed routes and terminal points of the proposed railway system;
- (c) the proposed location of terminals, associated buildings, workshops, depots and yards;
- (d) the safety aspects of the proposed railway system, including the signalling systems and communications systems;
- (e) the proposed structure for rates as may be applicable and other proposed conditions of carriage;
- (f) the proposed integration with other existing or proposed railways;
- (g) the scheduled of completion and proposed date for opening of the railway;
- (h) the proposed licensed operator of the railway to be constructed, if different from the person intending to construct the railway;
- (i) the description of proposed related, peripheral or ancillary activities to be undertaken in connection with the provision of railway services;
- (j) the proposed universal accessibility in all relevant parts of the railway to cater the needs of disabled persons; and
- (k) such other matters as will enable the Minister to evaluate the railway scheme.

(3) Every railway scheme deposited under subsection (2) shall be accompanied with a map showing the proposed routes for the railway.

(4) The Director may require the applicant to submit such further or additional information as the Director deems necessary with reference to any information contained in the railway scheme, and such further or additional information shall be submitted within such period and in such manner as the Director may require.

(5) The Director shall as soon as practicable submit a written recommendation to the Minister.

(6) The written recommendation of the Director shall specify –

- (a) the reasons for its recommendation; and
- (b) any conditions which the applicant should be subject to if the Director recommends to the Minister to grant the approval.

(7) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Approval of railway scheme and deposit of plans, sections, etc.

23. (1) The Minister may, after having due regard to the recommendation of the Director under section 22, reject or grant conditional approval to a railway scheme.

(2) Where the Minister grants conditional approval to the railway scheme under subsection (1), the applicant shall deposit in the office of the Director for public inspection –

- (a) plans and sections on a scale as prescribed by the Director or as set out in regulations made under this Enactment showing the lines and levels of the proposed railway and also –

- (i) any intended alteration in the water level of any canal or in the level or rate of inclination of any road or railway which will be crossed by the proposed railway;
 - (ii) any intended diversion, widening or narrowing of any road, navigable river, canal or railway;
 - (iii) any intended laying of any part of the proposed railway along any road; and
 - (iii) any intended crossing of the tracks of the proposed railway over any road, navigable river, canal or railway; and
- (b) a book of reference containing the names of the proprietors and lessees of the lands which may be required for the purposes of the proposed railway.

(3) The Director may require the applicant to submit such further or additional information as the Director deems necessary in respect of the plans and sections and book of reference referred to in subsection (2).

(4) The applicant shall give notice of the deposit of such plans and sections and book of reference by advertisement in at least three successive issues of at least two national newspapers, one of which shall be in the national language, calling on all persons having any objection to the plans and sections and book of reference to send in a statement of their objections in writing to the Director within three months from the date of the last notice in the newspapers.

(5) At the expiration of the period of three months, the Director shall present the plans and sections and book of reference referred to in subsection (2) together with any objections thereto and its recommendations to the Minister for final approval.

(6) The Minister may, after considering the plans and sections and book of reference and any objection thereto and having due regard to the recommendations of the Director –

- (a) give final approval to or reject the railway scheme; or
- (b) where he considers that the plans and sections should be amended, direct the applicant to reconsider such plans and sections and report to the Director within such period as the Director may require.

(7) In the case where paragraph (6)(b) applies, the Minister may, after considering the amendments made to the plans and sections and having due regard to the objections made under subsection (4) and the recommendations of the Director, give final approval to or reject the railway scheme.

(8) The plans and sections, if approved by the Minister, whether under paragraph (6)(a) or subsection (7), shall be deemed to be deposited plans referred to in this Enactment.

(9) The Minister may, in approving any railway scheme, impose any requirement or condition as he considers appropriate, having due regard to the recommendations of the Director.

(10) The decision of the Minister to grant or not to grant the approval under this section shall be communicated in writing to the applicant by the Director as soon as practicable.

(11) A person who contravenes any requirement or condition imposed under subsection (9) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Prescribed modification, change or extension of approved railway schemes

24. (1) No person may undertake any prescribed modification, change or extension of a railway scheme approved in accordance with section 23 –

- (a) without the approval of the Minister, acting on the recommendation of the Director; and

(b) save in accordance with the requirements and procedures set out in subsection (2) and such regulations as may be made under this Enactment for the purposes of this section.

(2) Any person intending to undertake any prescribed modification, change or extension of an approved railway scheme shall submit a written application to and deposit with the Director such information and documents, including plans, as may be requested by the Director and, within such period and in such manner as the Director may require, in order to enable the Minister to evaluate such application.

(3) A person who contravenes subsection (1) commits an offence and shall, on conviction be liable to a fine not exceeding one hundred thousand ringggit or to imprisonment for a term not exceeding three years or to both.

Approval of prescribed modification, change or extension of approved railway schemes and deposit of plans, information and other documents

25. (1) The Minister may, after having due regard to the recommendation of the Director, reject or grant conditional approval in respect of an application made under section 24.

(2) Where the Minister grants conditional approval in respect of the application under subsection (1), the applicant shall deposit in the office of the Director for public inspection such documents as may be specified by the Director.

(3) The Director shall provide his recommendations on the application under subsection (1) to the Minister and for this purpose subsection 23(4) and (5) shall apply *mutatis mutandis*.

(4) The Minister may, after considering the plans and sections and book of reference and any other documents as specified by the Director, and any objections thereto and having due regard to the recommendations of the Director –

(a) give final approval to or reject the application under subsection (1);
or

(b) where he considers that the plans and sections should be amended, direct the applicant to reconsider such plans and sections and report to the Director within such period as the Director may require.

(5) In the case where paragraph (4)(b) applies, the Minister may, after considering the amendments made to the plans and sections and having due regard to the objections made thereto and the recommendations of the Director, give final approval to or reject the application under subsection (1).

(6) The plans and sections, if approved by the Minister, whether under paragraph (4)(a) or subsection (5), shall be deemed to be deposited plans referred to in this Enactment.

(7) The Minister may, in approving any application under subsection (1), impose any requirement or condition as he considers appropriate, having due regard to the recommendations of the Director.

(8) The decision of the Minister to grant or not to grant the approval under this section shall be communicated in writing to the applicant by the Director as soon as practicable.

(9) A person who contravenes any requirement or condition imposed under subsection (7) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART

LICENCE TO OPERATE RAILWAY AND OPENING OF RAILWAY

Application for operator's licence

26. (1) No person shall operate any railway unless he holds an operator's licence issued under this Part.

(2) An application for an operator's licence shall be made to the Director in the prescribed manner as determined by the Director and shall be accompanied by the prescribed fee and such information and documents as may be specified by the Director.

(3) The Director shall, within a specified period as determined by the Minister, submit a written recommendation to the Minister on the application.

(4) The written recommendation of the Director shall specify –

(a) the reasons for his recommendation; and

(b) any conditions which the applicant should be subject to if the Director recommends to the Minister to issue the operator's licence.

(5) The Minister may after having due regard to the recommendations of the Director –

(a) approve the application and issue an operator's licence to the applicant upon payment of the prescribed fee; or

(b) refuse the application.

(6) Notwithstanding subsection (5), where a railway scheme has been approved in accordance with this Part, the applicant who submitted the railway scheme shall, subject to any condition or requirement imposed by the Minister on such approval, be deemed to be qualified and suitable applicant for the purpose of operating the railway approved under the railway scheme, and the Minister shall, on an application by the applicant under subsection (2), approve

the application and issue an operator's licence to such applicant upon payment of the prescribed fee.

(7) Every operator's licence issued under this section shall set out the duration of the operator's licence and the following conditions may be attached to the operator's licence:

- (a) the type of railway system and railway services and related, peripheral or ancillary activities to be operated or provided by a licensed operator;
- (b) the annual licence fee payable by a licensed operator;
- (c) the fares which a licensed operator may impose on passengers;
- (d) the freight which a licensed operator may impose in respect of the carriage of goods;
- (e) the particular duties of a licensed operator in respect of the railway services operated or facilities provided by it; and
- (f) such other matters or conditions as the minister thinks fit.

(8) The Minister may, on the recommendation of the Director, at any time, add, cancel or vary any of the conditions attached to an operator's licence issued under this section.

(9) The issuance of an operator's licence to the applicant by the Minister under this section shall not impose any liability on the Director or the Government for any loss or damage occasioned by any act, omission or default of the applicant.

(10) A person who contravenes subsection (1) or any condition attached to an operator's licence issued under this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Notice of intended opening of a railway

27. (1) Subject to subsection (2), a licensed operator shall, at least three months before the intended date of opening of a railway, give to the Director a written notice of its intention to open the railway.

(2) The Director may, if it thinks fit or on the application of a licensed operator, reduce the period within which the notice under subsection (1) is to be given or dispense with such notice.

Minister to approve opening of railway

28. (1) No railway shall be opened without the approval of the Minister, on the recommendation of the Director.

(2) The Minister shall only give his approval to the opening of a railway after he has received a written report from an engineer appointed by the Director that –

- (a) he has made a careful inspection of the railway;
- (b) the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock are such as have been prescribed;
- (c) the railway is sufficiently supplied with rolling-stock and otherwise complies with the railway scheme approved under section 23 or 25, and conditions or requirements imposed in connection therewith; and
- (d) in his opinion the opening of the railway will not cause any danger to the passengers or any damage to the goods to be carried thereon.

(3) This section shall apply *mutatis mutandis* –

- (a) to any addition or modification forming part of or directly connected to a railway constructed after the inspection which preceded the first opening of the railway;

- (b) to any reconstruction materially affecting the structural character of any railway; and
- (c) to any other prescribed modification, change or extension made to the railway scheme approved under section 25, which is prescribed to be applicable for the purposes of this section.

(4) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Revocation or suspension of operator's licence

29. (1) Where the Director is satisfied that a licensed operator is contravening, or has contravened and is likely again to contravene, any of the conditions of its operator's licence or any provision of this Part or subsidiary legislation made in connection therewith which imposes an obligation, duty or responsibility on it, the Director may give a written notice to the licensed operator requiring it to comply with that condition or provision within the period stated in the notice.

(2) If on the expiry of the period stated in such notice the licensed operator fails to comply with the condition or provision mentioned therein, the Director shall submit to the Minister a report of such failure by the licensed operator together with any recommendations by the Director and the report shall be in such form as the Director considers appropriate.

(3) Where, after considering the report from the Director and his recommendations, the Minister is satisfied that the contravention or apprehended contravention is of a serious nature or has affected or is likely to affect public interest or safety, and the licensed operator has refused to take or has not taken all such steps as appear necessary to the Director for the purpose of securing compliance with the condition or provision in question, the Minister may authorise the Director to give to the licensed operator a written notice stating that it proposes to revoke or suspend, as the case may be, its operator's licence and such notice shall also set out or specify –

- (a) the condition of the operator's licence or provision which the licensed operator has contravened and the acts or omissions which constitute such contravention; and
- (b) the period, not being less than thirty days from the date of the notice, within which the licensed operator may make representations with respect to the proposed revocation or suspension, as the case may be.

(4) After the expiry of the period specified in the notice and considering any representations made by the licensed operator and any recommendations made by the Director, the Minister shall decide whether to proceed with the proposed action or to take no further action.

(5) A notice shall be given by the Director to the licensed operator of the decision of the Minister and the decision shall take effect from the date on which the notice is served on the licensed operator.

(6) In addition to his powers under the preceding subsections, the Minister may, by written notice, revoke or suspend an operator's license –

- (a) if the issuance of the operator's licence was induced by a false representation of fact by or on behalf of the licensed operator;
- (b) in the event of the death, incapacity, bankruptcy or, in the case of a company, liquidation, of the licensed operator or, where a receiver or manager is appointed in relation to the business of operating railway services of such licensed operator; or
- (c) If he is satisfied that the railway used in connection with the operator's licence, has been or is intended to be used for an unlawful purpose or that the original purpose for which the operator's license was issued no longer exists:

Provided that the Director shall not revoke or suspend the operator's licence unless it is satisfied that, after giving the licensed operator an opportunity of making any representation in writing it may wish to make, the operator's licence should be revoked or suspended.

(7) The decision of the Minister shall be final and conclusive and no compensation shall be payable to the licensed operator in respect of any action lawfully taken against it under this section.

(8) Where an operator's licence –

(a) has been revoked, it shall have no effect from the date of revocation and the licensed operator shall within fourteen days from the date of revocation of the operator's licence return the operator's licence to the Director; or

(b) has been suspended, it shall have no effect during the period of suspension.

(9) A licensed operator whose operator's licence has been suspended shall not, during the period of suspension, operate the railway authorized by such operator's licence.

(10) A licensed operator who contravenes subsection (8) or (9) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Inspection

30. After a railway has been opened, the railway shall be inspected by an engineer appointed by the Director in such manner and at such intervals as may be prescribed by the Director or as set out in regulations made under this Enactment.

Power to close railway when opened

31. (1) If after the inspection of a railway, the engineer is of the opinion that the use of the railway may cause danger to the public or damage to the goods carried on the railway, he shall inform the Director of his opinion together with the grounds for his opinion.

(2) The Director may thereupon order the railway to be closed, or in the case of rolling-stock, order the rolling-stock to be discontinued from use or the railway be used only on such conditions as the Director considers necessary for the safety of the public or goods carried thereon.

Reopening of railway after closure

32. (1) A railway which has been ordered to be closed shall not be reopened until it has been inspected by an engineer appointed by the Director and its reopening has been approved by the Minister.

(2) A rolling-stock which has been ordered to be discontinued from use under section 31 shall not be used until it has been inspected and certified to be fit for use by an engineer appointed by the Director and the Minister has approved its use.

Reopening of railway track after temporary suspension

33. When an accident has occurred on a railway or a railway track resulting in a temporary suspension of traffic, and either the original railway track and works have been rapidly restored to their original standard or a temporary diversion has been laid for the purpose of restoring communication, the original railway track and works so restored may be reopened or the temporary diversion opened, as the case may be, subject to the following conditions:

(a) that the railway official in charge of the works undertaken by reason of the accident has certified in writing that the reopening of the restored railway track and works or the opening of the temporary

diversion will not, in his opinion, cause any danger to the public or damage to the goods carried on the railway track; and

- (b) that written notice of the reopening of the railway track and works or the opening of the temporary diversion has been sent to the Director.

PART VII

DUTIES OF LICENSED OPERATOR

Duties of licensed operator

34. It shall be the duty of every licensed operator –

- (a) to provide railway services and facilities as specified in its operator licence to such extent as is necessary for the licensed operator to meet any prescribed standards of performance; and
- (b) to develop and maintain an efficient railway system.

Standards of performance

35. (1) The Minister may by regulations prescribe such standards of performance in connection with the provision of railway services and facilities as, in his opinion, ought to be achieved by a licensed operator.

(2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) may –

- (a) make provisions for procedures to be followed for the enforcement of the standards of performance; and
- (b) provide circumstances in which a licensed operator may be exempted from the requirement of the regulations.

Submission of reports accounts, etc.

36. (1) A licensed operator shall, within three months after the end of the financial year of the licensed operator or such longer period as the Director may allow, furnish to the Director –

- (a) a report of its operation during that financial year containing such information as is necessary to enable the Director to assess the level of the licensed operator's compliance with performance and regulatory standards as well as satisfactory evidence of compliance with the conditions of the operator's licence;
- (b) its audited annual balance sheet, profit and loss account, together with any notice thereon, and the reports of its auditor and, where applicable, its directors; and
- (c) a return tabulating such information as may be required by the Director in respect of offences committed by the licensed operator and its employees and members of the public in connection with or relating to the operations of the railway.

(2) Without prejudice to subsection (1), the Director may from time to time require a licensed operator to submit to him -

- (a) such information relating to the maintenance by the licensed operator of the terminals in the possession or under the control of the licensed operator as the Director may require or as set out in regulations under section 89, including frequency of maintenance of the same;
- (b) such statistical information relating to the operations of the licensed operator;
- (c) its passengers or goods forecast during such period and in such form as may be determined by the Director; and

(d) future development plans relating to any service or facility which the licensed operator is bound to provide under the conditions of the operator's licence.

(3) The information required under this section shall be furnished in such form and manner, at such interval and shall be accompanied by such explanations and supporting documents as the Director may require.

(4) The Director may require a licensed operator to appoint, at the licensed operator's cost, an independent expert with qualifications as may be specified by the Director, to conduct an audit or review any of the information which a licensed operator is required to furnish to the Director under this section, but such appointment and report of the independent expert shall not relieve or derogate in any way the licensed operator's liability under this section.

(5) The Director or an authorised officer may, at any time, as he deems necessary, conduct an audit on the business and activities of the licensed operator and the licensed operator shall take all necessary steps, at its own cost, to assist and facilitate the Director or the authorised officer in conducting the audit, including to grant them access to its premises and documentation and information.

(6) A licensed operator who –

(a) fails to furnish any information as may be required by the Director under this section; or

(b) refuses to assist or facilitate, or obstructs, the Director or an authorised officer in conducting an audit under this section,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Director to be informed of any change in control of licensed operator, etc.

37. (1) It shall be the duty of every licensed operator, at all times, to inform the Director immediately of the following matters:

- (a) any change in the control of the licensed operator;
- (b) any industrial dispute between the licensed operator and its employees;
- (c) any occurrence of fire within its premises;
- (d) any natural catastrophes affecting it;
- (e) any reprimands or fines imposed on the licensed operator by any Government Entity; and
- (f) any proceedings or claims instituted or made against the licensed operator which might have an adverse effect on its financial condition or on its ability to perform any condition under the operator's licence.

(2) For the purposes of paragraph (1)(a), "control" in relation to a licensed operator, means having the power, directly or indirectly, to direct the management and policy of the licensed operator.

(3) A licensed operator who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence shall, in addition, be liable to a daily fine not exceeding one thousand ringgit for each day during which the offence continues to be committed from the date the licensed operator is required to submit the information under subsection (1).

Traffic facilities

38. Every licensed operator shall afford all reasonable facilities for the receiving, forwarding and delivery of traffic on the railway.

PART VIII
VOCATIONAL LICENCE

Vocational licences for railway train drivers

39. (1) No person shall drive a railway train unless he holds a vocational licence issued under this section.

(2) The Director may, subject to regulations made under this Enactment, attach such conditions as he thinks fit to any vocational licence issued under this section and the holder of any vocational licence shall comply with such conditions.

(3) A vocational licence may at any time be revoked or suspended by the Director upon the ground that, by reason of his conduct or physical disability, the holder is not a fit and proper person to hold such a licence or in the event of a breach of any condition of the vocational licence:

Provided that the Director –

- (a) shall not revoke or suspend the vocational licence on the ground of breach of any of the conditions of the vocational licence unless it is satisfied, after giving the holder of the vocational licence an opportunity of making any representation in writing he may wish to make, that owing the frequency of the breach, or to the breach having been committed wilfully or the danger to the public involved in the breach, the vocational licence should be revoked or suspended; or
- (b) shall not revoke or suspend vocational licence on grounds other than the ground specified in paragraph (a), unless it is satisfied that, after giving the holder of the vocational licence an opportunity of making any representation in writing he may wish to make, the vocational licence should be revoked or suspended.

(4) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Licensed operator to employ persons with vocational licences

40. (1) No licensed operator under this Part shall employ or permit any person who does not hold a vocational licence issued under section 39 to drive a railway train.

(2) A licensed operator who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

PART IX

OFFENCES RELATING TO RAILWAYS

Penalty for fraud

41. Any person who –

(a) defrauds or attempts to defraud the Director or operator of a railway service, which requires fares to be paid in advance of the provision of such service –

(i) by travelling or attempting to travel upon a railway service without having previously paid his fare;

(ii) by riding in or upon a carriage of a higher class than that for which he shall have paid his fare;

(iii) by tendering a ticket out of date;

- (iv) by continuing his journey in or upon any of the railway carriage beyond the station for which he has paid his fare without having previously either paid the fare for the additional distance or obtained the sanction of the guard of the railway train;
- (b) knowingly and wilfully refuses or neglects on arriving at the station to which he has paid his fare to quit such railway carriage;
- (c) transfers or profits by the transfer of the return half of any ticket obtained by him; or
- (d) in any manner whatsoever attempts to evade the payment of his fare,

commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both for each offence.

Entering or leaving railway coach while coach in motion or travelling irregularly

42. Any person who –

- (a) at any time enters or leaves or attempts to enter or leave any railway coach otherwise than by the door provided for the purpose on the side of the coach adjacent to the platform or other similar place appointed by the Director or licensed operator as a place for persons to enter or leave a railway coach; or
- (b) open any outer door of any such coach while it is in motion,

commits an offence and shall, on conviction, be liable to a fine of not exceeding one thousand ringgit.

Resisting entry, and entering and refusing to leave full train

43. Any passenger who –

- (a) resists the lawful entry of another passenger into a railway coach or portion of a railway coach not reserved for the use of the passenger resisting;
- (b) after having been refused admission onto a train by a railway official, on account of the train being full, nevertheless persists in entering or attempting to enter the train; or
- (c) having gone on board a train at any place and having been requested by a railway official, on account of the train being full, to leave the train before it has quitted that place, does not comply with that request,

commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit and, in addition, may be removed from the train by any railway official.

Fine for riding on engine, tender or luggage van

44. Any person other than the engineman and fireman and assistant fireman, if any, not being specially authorised so to do by the Director or the Locomotive Superintendent or executive officer in charge of the line, riding or attempting to ride upon any locomotive engine or tender upon the railway, and any person other than the guard not being specially authorised so to do by the Director or the Traffic Superintendent or the guard, riding or attempting to ride upon the railway in or upon any luggage-van or goods-wagon, or other vehicle not appropriated to the carrying of passengers, commit an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit for each offence.

Smoking, etc., and chewing of betel prohibited

45. (1) No person shall smoke any cigarette or tobacco products, or chewing of betel in or on any railway or railway premises.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Penalty for intoxication or nuisance

46. Any person being in a state of intoxication, or insufficiently or indecently clad, or committing any nuisance or act of indecency in any railway carriage, or upon any part of the premises appertaining to the railway, or wilfully and without lawful excuse interfering with the comfort of any passenger on the railway, commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both and in addition to such penalty the offender may be removed by any railway official from any such carriage and premises, and shall forfeit his fare.

Penalty for disorderly or offensive behaviour or nuisance

47. Any person who –

- (a) behaves in disorderly or offensive manner or commits any nuisance on a railway coach or upon any railway premises; or
- (b) assaults, hinders or obstructs a railway official in the execution of his duties,

commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both and in addition, the offender may be removed by any railway official from any such coach or railway premises and shall, if he is a passenger, forfeit his fare.

Penalty for improper use of emergency signal apparatus

48. Any person who makes improper use of the emergency signal apparatus in any coach or on any train for the use of passengers to stop a train in case of emergency commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Penalty for entering private room for carriage

49. (1) Any male person without lawful excuse entering any railway-carriage or portion thereof or any private room or apartment specially reserved and provided for the exclusive use of females knowing the same to be so exclusively appropriated or remaining therein after having been informed of such exclusive appropriation or entering any carriage or compartment specially reserved for the private use of any person or persons or remaining therein after being requested to depart therefrom, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit.

(2) Any passenger of lower class knowingly and wilfully refusing or neglecting to leave any room or place set apart for passengers of a higher class, commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

Liability for goods lost, destroyed or injured

50. The Director or any person authorised on his behalf or any railway official shall in no case be liable for –

- (a) the loss of articles or goods, or for any damage or injury thereto whether occurring on the railway, or on the property or premises under the control of the Director, such loss or damage being due to an act of God or to civil commotion;
- (b) the loss of or damage to passenger's free luggage, the same not having been registered, nor for loss or damage to any articles or goods whilst in the custody of the Director or any person authorised on his behalf, whether at the station of despatch or during transport or whilst at the station of receipt, nor for damage caused thereto by fire, unless the said articles or goods shall have been booked and such loss or damage shall have been caused by the negligence or misconduct of railway officials;

- (c) the loss, damage or injury of or to articles or goods put into returned wrappers, boxes, packages, and the like, and falsely described as empties, nor for any articles or goods left until called for, or to order, or warehoused for the convenience of the parties to whom they belong or by or to whom they are consigned; nor for any goods remaining on the railway premises beyond forty eight hours after arrival at the station of destination;
- (d) the loss, damage or injury to any articles insufficiently or improperly packed, marked, directed or described or containing a variety of articles liable to damage each other or the contents of other packages nor for leakage arising from bad or imperfect casks or cooperage, or from bad or imperfect vessels containing liquids, or from fermentation;
- (e) loss, damage or injury to any articles or goods whatsoever caused by reason of accidental or unavoidable delay in transit;
- (f) damage by fire to neighbouring property or buildings privately owned such fire having originated on the line of railway, unless such damage shall be proved to have been directly caused by the sparks from the engines or by the negligence of persons employed by the Director and provided that the roofs and sides of such buildings shall not have been constructed of materials of a more inflammable nature than metal and wood.

Remedy for non-payment of the carriage of goods or fares

51. (1) If any person shall fail to pay on demand any sum due for the conveyance of any goods, it shall be lawful for the Director to detain all or any part of such goods, or, if the same shall have been removed from the premises appertaining to the railway, any other goods of such person which shall then be upon such premises or shall thereafter come into the possession of the Director or any person authorised on his behalf, and after reasonable notice to such person to sell by public auction a sufficient quantity of such goods to realise the sum payable as

aforesaid, and all charges and expenses of such detention and sale; and out of the proceeds of the sale to retain the sum so payable, together with the charges and expenses aforesaid, rendering the surplus, if any, of the money arising by such sale and such of the goods as shall remain unsold, to the person entitled thereto; or the Director may recover any sum by action at law.

(2) The goods of passengers may be detained and sold, and the proceeds disposed of as above provided for non-payment of the fares due by the owners thereof.

Written account of goods to be given on demand

52. (1) The owner or person having the care of any goods other than passenger's luggage, which shall have been carried upon the railway, or shall be brought to the premises appertaining to the railway for the purpose of being carried on the railway, shall, on demand by any railway official, deliver to such official an exact account in writing, signed by him, of the number, quantity and description of such goods.

(2) Any such owner or person wilfully giving a false account of such goods in subsection (1) with intent to avoid full payment of the railway tariff chargeable thereon shall be liable to pay double the amount of such tariff.

Dangerous or offensive goods

53. (1) No person shall carry upon the railway or be entitled to require any railway official to carry upon the railway any goods which in the judgement of any railway official is of a dangerous nature or so bulky that it would be unsafe for the railway to convey that goods.

(2) Any person carries upon the railway any dangerous or offensive goods or delivers for carriage any such goods without distinctly declaring the nature of the goods commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) Any railway official may refuse to carry any luggage or parcel that is suspected to contain goods of a dangerous or offensive nature, and may require the luggage or parcel to be opened.

(4) In case any such luggage or parcel shall have been received by any railway official for the purposes of being carried on the railway, any railway official may stop the transit thereof until he shall be satisfied as to the nature of the contents of each luggage or parcel.

(5) For any bulky or voluminous article, package or the like, being of a weight disproportionate to the cubic space occupied thereby, a freight charge may be made in excess of the actual weight thereof.

Persons suspected with an infectious disease not allowed to travel

54. (1) Any person with an infectious disease may be removed or caused to be removed from any railway carriage and from the railway premises by any railway official.

(2) Such person shall in addition be liable to defray the cost of disinfecting any such carriage or portion thereof.

(3) Any person in contravention with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine of not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Penalty for removing, etc., stakes, pegs or other marks

55. Any person who removes, defaces or in any way interferes with any stakes, pegs or other marks placed by or for the purposes of a railway along a railway track or contiguous thereto commit an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Penalty for trespass

56. Any person who trespasses upon a railway or upon any railway premises commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit and, if any such person refuses to leave the railway or railway premises on being requested to do so by any railway official, he commit an offence and shall, on conviction, be liable to a fine of not exceeding one thousand ringgit, and may be immediately removed therefrom.

Penalty for driving any vehicle or animal upon or across a railway

57. Any person who wilfully rides, leads, or drives upon or across a railway track any vehicle or animal, except when directly crossing the railway track at any road or place appointed for that purpose at a time at which he may lawfully do so, commit an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit for each offence.

Precautions if railway crosses road

58. The Director may declare any road or path crossed by the railway on the level to be a public road or path and to construct and maintain such fencing and gates and to provide such proper persons to open and close and attend to such gates in such manner and under such regulations made under this Enactment.

Penalty for damage, whether wilful or negligent

59. (1) Any person who –

- (a) wilfully or negligently damages any railway or any property;
- (b) removes sand, stone, earth or any other matter or thing from banks, bridges, culverts, retaining walls or the railway track; or
- (c) fells timber in a manner likely to endanger the safety of passing trains or of any person in or upon such trains, or to cause damage to the railway track,

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Any person who ties up the wires of wire fencing, breaks down or destroys any fencing or hedges, or does or causes to be done any act that damages or is likely to damage any fence or hedge appertaining to a railway commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

(3) Any person who, wilfully or negligently, diverts any stream or drain or, by any means, causes water to flow on to a railway or, causes damage to a railway in any manner by water, commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(4) Any person who, having any contract for the supply of bricks, ballast, timber, fuel, or any other material, or being employed in connection with the supply of such material, negligently places or stacks the said material in an unsafe or careless manner, or at less than the prescribed distance from the rails, so that the safety of passing trains or of any person in or upon such trains is endangered commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Penalty for damaging carriage, etc.

60. Any person –

- (a) unlawfully and wilfully removing or defacing any number plate or removing or extinguishing any lamp on any carriage or signal post belonging to the railway, or wilfully imitating any railway signal; or
- (b) wilfully or negligently damaging any carriage, engine, wagon, truck, station, warehouse, bridge, building, machine, rail-points, fence or any other matter or thing belonging to the railway,

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Opening or not properly shutting gates

61. (1) If –

- (a) any person opens or attempts to open any gate set up on either side of any railway track across a road, or passes or attempts to pass, or drives or takes or attempts to drive or take, any vehicle, animal or other thing across the railway tracks; or
- (b) in the absence of a gate-keeper, any person omits to shut and fasten and, where necessary, to lock such a gate as aforesaid as soon as he and any vehicle, animal or other thing under his charge has passed through the gate,

commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Maliciously obstructing or attempting to obstruct a railway

62. If any person unlawfully –

- (a) puts, throws or causes to fall against, upon or across a railway any wood, stone or other matter or thing;
- (b) takes up, removes, loosens, or displaces any rail, sleeper or other matter or thing appertaining to a railway;
- (c) turns, moves, unlocks or diverts any railway points or other machinery appertaining to a railway;
- (d) moves any part of the rolling-stock on a railway track or leaves the same on any part of a railway track;
- (e) makes, shows, hides or removes any signal or light upon or near a railway; or
- (f) does or causes to be done or attempts to do any other act or thing in relation to a railway, with intent, or with the knowledge that he is likely, to obstruct the working of the railway, or to endanger the safety of any person travelling or being upon the railway,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Maliciously hurting or attempting to hurt persons travelling by train

63. If any person unlawfully throws or causes to fall or strike at, against, into, or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with the knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, commits an offence and shall, on conviction, be liable to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Penalty for causing train to stop

64. If any person not being a railway official, without reasonable excuse, by making any gesture or exhibiting any signal or otherwise, causes a moving train to be brought to a standstill, he commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Penalty for wilful act or omission endangering passenger

65. Whoever wilfully does any act, or wilfully omits to do what he is legally bound to do, intending by such act or omission to cause or knowing that he is thereby likely to cause the safety of any person travelling or being upon a railway to be endangered, commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Penalty for negligent act

66. Any person who rashly or negligently, and without lawful excuse, does any act which is likely to endanger his own safety or that of any person travelling or being upon a railway, commits an offence and shall, on conviction, be liable to a fine not

exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Making false statements, etc.

67. Any person who, in furnishing any information or making any application under or for the purposes of any provision of this Enactment, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit.

Obstructing engine, carriage or endangering safety of passengers

68. Any person –

- (a) wilfully and maliciously placing, casting or throwing upon or across the railway any wood, stone, matter or thing belonging to the railway;
- (b) turning, moving or diverting any point or other machinery belonging to the railway;
- (c) making, showing, hiding or removing any signal or light upon or near the railway;
- (d) doing or causing to be done any act with intent, in any of the cases aforesaid, to upset, to obstruct, overthrow, injure, or destroy any engine, tender, carriage or truck used upon the railway;
- (e) endangering the safety of any person travelling or being upon the railway; or
- (f) casting, throwing, causing to fall or strike against, into or upon any engine, tender, carriage or truck used upon the railway any wood, stone or other matter or thing, with intent to endanger the safety of any person being in or upon such engine tender, carriage or truck,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Penalty for an act if not wilful

69. Any person rashly or negligently and without lawful excuse doing any act likely to endanger his own safety, or that of any person travelling or being upon the railway commits an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Penalty for removing documents or notices

70. Any person removing or defacing or in any other way injuring any document exhibited or any notice or document posted for the purpose of the railway at any station or anywhere upon the railway, commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three month or to both.

PART X
MISCELLANEOUS

Authorised officers

71. (1) The Minister may appoint in writing such number of public officers as he thinks necessary for the purpose of this Enactment.

(2) An authorised officer may exercise all powers vested in him under this Enactment or under any of its subsidiary legislation.

Authority card

72. (1) There shall be issued to each authorised officer an authority card to be signed by the Director.

(2) Whenever an authorised officer exercises any of this powers under this Enactment or under any of its subsidiary legislation, he shall on demand produce to the person against whom the power is being exercised the authority card issued under subsection (1).

Power of investigation

73. (1) An authorised officer may investigate the commission of an offence under this Enactment.

(2) Notwithstanding anything in this Enactment or any other written law, an authorised officer shall have the right to be present at this site of any accident involving a railway for the purpose of investigating the same and preparing a report of the investigation and recommendations to be submitted to the Director.

(3) For the avoidance of doubt, it is declared that for the purposes of this Enactment, the authorised officer shall have all or any of the powers of a police officer of whatever rank in relation to police investigation in seizeable cases as provided under the Criminal Procedure Code [Act 593], and such powers shall be in addition to the powers provided under this Enactment and shall not be in derogation thereof.

Power of arrest

74. (1) An authorised officer may arrest without warrant any person –

- (a) found committing or attempting to commit or abetting the commission of an offence under this Enactment; or

(b) whom the authorised officer reasonably suspects of being engaged in committing or attempting to commit or abetting the commission of an offence under this Enactment.

(2) An authorised officer making an arrest under subsection (1) shall, without unnecessarily delay handover the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as is provided by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

General penalty

75. Any person who contravenes or fails to comply with any of the provisions of this Enactment or any of its subsidiary legislation relating to such provisions commits an offence and, if no special penalty is expressly provided in this Enactment, shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Recovery of fares, freight, special charges, etc.

76. (1) When any person is convicted before a court of criminal jurisdiction for an offence under this Enactment or under any of its subsidiary legislation, the court may, in addition to imposing any penalty under this Enactment or under any of its subsidiary legislation, fix or assess the amount of any fares, freight, special charges, surcharges, damages, expenses or other sums of money whatsoever which may have become payable by such person to the Director, and order such amount to be paid by such person to the Director.

(2) Nothing in subsection (1) shall prevent the recovery of any fares, freight, special charges, surcharges, damages, expenses or other sums of money whatsoever which may have become payable by any person to the Director by way of a civil claim before a court of civil jurisdiction.

Lien for fares, rates and other charges

77. (1) If, on demand made by the Director or any railway official, any person fails to pay any sum due to or recoverable by the Director or any official from him in respect of any goods, whether such sum is due for the conveyance, handling, storage, demurrage, or other charges, or in repayment of any sum disbursed by the Director or any other sum howsoever arising, the Director may detain the whole or any of the goods or, if such goods have been removed from the railway premises, any other goods of such person then being in or thereafter coming into the possession of the Director.

(2) When any goods have been detained under subsection (1) the Director may –

(a) in the case of perishable goods, sell the same at once by public auction or private agreement as it may deem expedient; and

(b) in the case of other goods, sell by public auction, on the expiration of at least fourteen days' notice of the intended auction published in one or more of the local newspapers, such quantity of the goods as will be sufficient to recover the sum due to or recoverable by the Director together with all expenses of such detention, notice and sale, including, in the case of animal, the expenses of the feeding, watering and tending thereof.

(3) The Director may, out of the proceeds of the sale, retain the amount of the sum and expenses due to or recoverable by the Director, rendering the surplus, if any, of the proceeds and such of the goods as remain unsold to the person entitled thereto.

(4) If the person entitled thereto fails to remove from the railway premises, within a reasonable time, any of the goods which have remained unsold, the Director may sell the whole of such goods and shall, after deducting the expenses of the further detention and sale of such goods, render the surplus of the proceeds to the person entitled thereto.

(5) The person entitled to remove the goods shall not do so unless he tenders to the Director a sum equal to the costs, charges and expenses of the further detention of such goods from the date of the sale under subsection (2) to the date of removal.

(6) Notwithstanding anything in this section, the Director may recover by suit or action any such sum as is referred to in subsection (1).

Disposal of unclaimed goods

78. (1) When any goods have come into the possession of the Director for transport or otherwise, and are not claimed by the owner or other person appearing to the Director to be entitled thereto, the Director shall, if such owner or person is known, cause a notice to be served upon him requiring him to remove the goods.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the notice, the Director may, after a reasonable time, sell the goods as nearly as may be in accordance with section 77 and render the surplus, if any, of the proceeds of the sale to any person entitled thereto.

Requisition for written declaration of description of goods

79. (1) The owner or person having charge of any goods which are delivered to the licensed operator for the purpose of being transported, and the consignee of any goods which have been transported, shall, on the request of the Director,

deliver to the Director a declaration in writing signed by such owner or person, or by such consignee, as the case may be, containing such a description of the goods as may be sufficient to determine the rate which the Director is entitled to charge in respect thereof.

(2) If such owner or person, or consignee refuses or neglects to give such a declaration or refuses to open the package containing the goods in order that their description may be ascertained, the Director may –

(a) in respect of goods which have been brought for the purpose of being transported, refuse to carry the goods unless a rate is paid in respect thereof not exceeding the highest rate which may be in force at the time on the railway for any class of goods; or

(b) in respect of goods which have been transported, charge a rate not exceeding such highest rate.

(3) If a declaration delivered under subsection (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been transported, the Director may charge, in respect of the transportation of the goods, a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(4) If any difference arises between a railway official and the owner or person having charge, or the consignee, of any goods which have been delivered for transport, or have been transported, with respect to the description of goods the subject of a declaration under this section, the railway official may detain and examine the goods.

(5) if it appears from the examination that the description of the goods is different from that stated in the declaration delivered under subsection (1), the person who delivered the declaration, if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the Director the cost of the detention and examination of the goods, and the Director or

any person authorised on his behalf shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(6) If it appears that the description of the goods is not different from that stated in the declaration delivered under subsection (1), the Director shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as mentioned above.

(7) Any person adversely affected by subsection (3) or (5) may, unless he has previously admitted his liability, within seven days of the making of a claim by or on behalf of the Director or any person authorised on his behalf under any of the preceding subsections, require, by written notice, the Director or any person authorised on his behalf to recover such claim by suit or action, and until the termination of such suit or action, the right of the Director or any person authorised on his behalf to recover such claim by sale and retention of the proceeds thereof in the manner prescribed under this section shall be suspended.

Power of entry

80. The Director or any authorised officer may, for the purposes of this Enactment or any of its subsidiary legislation, enter upon any railway or railway premises to inspect and examine the state of the railway or railway premises.

Disposal of differences between licensed operators regarding conduct of joint traffic

81. Where two or more licensed operators whose railways have a common terminus or a portion of the same line of railway communication, are not able to agree upon arrangements for conducting, at such common terminus or at the point of junction between them, their joint traffic safety, the Director, upon the application of either or of any of such licensed operators, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending to such arrangements shall be borne by either or any of the licensed operators respectively.

Legal duties of railway official

82. Every railway official shall be legally bound to do everything necessary for or conducive to the safety of the public, and every such railway official shall be legally prohibited from doing any act which is likely to cause danger.

Apprehension of offenders

83. Any person found committing or attempting to commit an offence against this Enactment relating to railways may be arrested, without warrant, by any police officer, railway official or authorised officer, or by any other person whom such police officer, railway official or authorised officer may call to his aid, and every person so arrested shall, without unnecessary delay, be taken to the nearest police station to be dealt with in accordance with the law relating to criminal procedure for the time being in force:

Provided that a railway official shall not effect any such arrest outside the railway premises.

Earthwork above and under the railway reserve

84. (1) No person shall –

- (a) commences earthworks above and under the railway reserve (including on the same level or at a distance from the track); or
- (b) place, construct or bury object, structure, etc.;

without written approval from the Director.

(2) Any person contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) In addition to subsection (2), the Director may demolish or relocate the object, structure, *etc.*

Offence by body corporate

85. (1) Where a body corporate is commits of an offence under this Enactment or under any of its subsidiary legislation and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, commit an offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Compounding of offences

86. (1) The Director or any authorised officer may compound any offence under this Enactment or any of its subsidiary legislation, by accepting from the person reasonably suspected of having committed the offence such amount not exceeding fifty per centum of the amount of the maximum fine for that offence, including the daily fine, if any, in the case of a continuing offence, to which that person would have been liable if he had been convicted of the offence, within such time as may be specified in its written offer.

(2) Any money paid to the Director or any authorised officer shall be paid into and form part of the State Consolidated Fund.

(3) An offer under subsection (1) may be made at any time after the offence has been committed, and where the amount specified in the offer is not paid within

the time specified in the offer, or such extended time as the Director or any authorised officer may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.

Presumptions

87. In any proceedings for an offence under this Enactment, in so far as it may be necessary to establish the offence charged, it shall be presumed until the contrary is proved –

- (a) that any conveyance of passengers in a railway, was for hire or reward;
- (b) that any conveyance of goods in railway, was for hire or reward; or
- (c) that passengers carried in a railway were being carried in consideration of separate payments made by them.

Prosecution

88. (1) No prosecution for any offence under this Enactment shall be instituted except with the consent in writing of the Public Prosecutor.

(2) Any appointed officer authorised in writing by the Public Prosecutor may conduct the prosecution of any offence committed under this Enactment.

Power of Minister to make regulations

89. (1) The Minister on the recommendation of the Director may make regulations for all or any of the following purposes:

- (a) to provide for the safe carriage of passengers, their luggage and goods;
- (b) to provide for the safe use and maintenance of –

- (i) terminals; and
 - (ii) railways including railway systems and railway premises;
- (c) to regulate the opening and closure of railway stations and railway routes;
- (d) to regulate prescribed related, peripheral or ancillary activities undertaken in connection with the provision of any railway services;
- (e) to provide for all matters relating to consumer standards under this Enactment;
- (f) to provide for the prevention of trespass of, nuisance or obstruction upon, or damage or injury in relation to, a railway;
- (g) to provide for the minimum standards and specifications in respect of the design, construction and maintenance of the gates or barriers of an occupation crossing and to regulate the use of such crossing;
- (h) to provide for the custody of licenses and operator's licences, the production, return and surrender of licences and operator's licences on the expiration, revocation or suspension of the licences and operator's licences, or variation of the conditions thereof and the custody, production, return and obliteration of documents;
- (i) to provide for the form of register and other records to be kept and maintained by the Director, the opening, maintenance and closure thereof, the inspection and taking of extracts therefrom and the supply of copies thereof;
- (j) to provide for the form of notifications, notices and orders to be made under this Enactment;

- (k) to provide for the records to be kept by licensees, licensed operators and drivers of railways, the returns to be made and the manner of record-keeping;
- (l) to provide for all matters relating to the provision of information and additional information, and exemptions from providing information by the licensee, licensed operator and terminal licensee and the level of detail, interval, manner and form in which such information is to be provided for purposes of this Enactment;
- (m) to provide for the establishment, administration and regulation of accreditation-based compliance schemes in relation to licensees, licensed operators or drivers of railways and all matters in connection therewith, including the certification of accreditors of such schemes and provisions relating to the enforcement of such schemes;
- (n) to regulate the duties, conduct and conditions of service including hours of duty of drivers, conductors and persons attending to railways;
- (o) to regulate the number of persons to be employed as drivers, conductors and persons attending to railways;
- (p) to provide for the forms and procedures relating to applications for vocational licences by drivers of railway trains, the minimum qualifications to be possessed by such persons, to regulate their conduct, duties and powers, and any matter relating to their terms of service and requirement for continuous training;
- (q) to regulate the manner of payment and collection of fares and freight for railway services and ticketing systems;
- (r) to provide for the safe custody or disposal of any property accidentally left in a railway and the recovery of costs incurred in respect thereof;

- (s) to prohibit, in connection with the use of railways, the use of any appliances, accessories or machines, or the commission of any acts, which are likely to cause annoyance or danger;
- (t) to provide for the accounts and records to be kept by licensees or licensed operator;
- (u) to provide for the deposit of plans, sections on a scale and a book of reference for the purposes of approval of a railway scheme;
- (v) to provide for the construction, opening and closing and conditions of use of private crossings;
- (w) to provide for the manner and frequency of inspection of a railway after it has been opened;
- (x) to provide for such other matters for which this Enactment makes an express provision for the Minister to make regulations.

(2) Any regulation made under this Enactment may provide for any act or omission in contravention of the regulations to be an offence and may provide for penalties of a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Protection against suit and legal proceedings

90. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintain in any court against –

- (a) the Director or an enforcement officer; and
- (b) any other person or an account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Director or an enforcement officer, if the act was done in good

faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provision of this Enactment.

Public Authorities Protection Act 1948

91. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceeding against the Director or against any person authorised on his behalf or any railway official in respect of any act, neglect or default done or committed by him in good faith or any omission by him in good faith.

PART XI REPEAL AND SAVINGS

Repeal and savings

92. (1) The Railway Ordinance (*Cap. 116*) is hereby repealed.

(2) Notwithstanding subsection (1), all subsidiary legislations made under or in accordance with the repealed Ordinance shall, in so far as they are not inconsistent with this Enactment, continue in force until amended, revoked or replaced by this Enactment or any of its subsidiary legislation.

(3) Except in so far as it is expressly provided to the contrary, nothing in this Enactment shall –

- (a) affect appointments, directions or orders made under the repealed Ordinance;
- (b) affect the previous operation of, or anything duly done or suffered under the repealed Ordinance; and
- (c) affect any right, title, interest, liberty, privilege, obligation or liability acquired, accrued or incurred under the repealed Ordinance.

(4) All rent payable in respect of any lease of railway reserves granted under the provisions of the repealed Ordinance shall, upon the commencement of this Enactment, be paid into the State Consolidated Fund.

References in State laws, deeds, etc.

93. All references to the expressions of General Manager of railways and its cognate expressions in any written State laws, deed, bond, agreement or other instrument shall, when this Enactment comes into operation, be construed as references to the expressions of Director of railways and its cognate expressions.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 23rd day of November, 2017.

DATUK SERI PANGLIMA HAJI SYED ABAS SYED ALI,
Speaker,
State Legislative Assembly